

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

As Engrossed: S1/26/15 S2/3/15

# A Bill

SENATE BILL 64

5 By: Senator J. Woods  
6 By: Representative D. Whitaker  
7

## For An Act To Be Entitled

9 AN ACT TO PROVIDE FOR AN ENHANCED PENALTY FOR THE  
10 OFFENSE OF DRIVING WHILE INTOXICATED WHEN A PERSON  
11 CAUSES AN ACCIDENT OR DRIVES WITHOUT A DRIVER'S  
12 LICENSE IN EFFECT WHILE INTOXICATED; AND FOR OTHER  
13 PURPOSES.  
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## Subtitle

16 TO PROVIDE FOR AN ENHANCED PENALTY FOR  
17 THE OFFENSE OF DRIVING WHILE INTOXICATED  
18 WHEN A PERSON CAUSES AN ACCIDENT OR  
19 DRIVES WITHOUT A DRIVER'S LICENSE IN  
20 EFFECT WHILE INTOXICATED.  
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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26 SECTION 1. Arkansas Code § 5-65-111 is amended to read as follows:

27 5-65-111. ~~Prison~~ Jail terms – Exception – Enhancements.

28 (a)(1)(A) ~~Any~~ A person who pleads guilty or nolo contendere to or is  
29 found guilty of violating § 5-65-103, for a first offense, is guilty of an  
30 unclassified misdemeanor and may be imprisoned for no less than twenty-four  
31 (24) hours and no more than one (1) year.

32 (B) However, the court may order public service in lieu of  
33 jail, and in that instance, the court shall include the reasons for the order  
34 of public service in lieu of jail in the court's written order or judgment.

35 (2)(A) However, ~~if a passenger under sixteen (16) years of age~~  
36 ~~was in the vehicle at the time of the offense,~~ a person who pleads guilty or



1 nolo contendere to or is found guilty of violating § 5-65-103, for a first  
2 offense, is guilty of an unclassified misdemeanor and may be imprisoned for  
3 no ~~fewer~~ less than seven (7) days and no more than one (1) year, if at the  
4 time of the offense:

5 (i) A passenger under sixteen (16) years of age was  
6 in the motor vehicle;

7 (ii) The person was driving on a *suspended or*  
8 *revoked* driver's license or was driving without having a driver's license in  
9 effect; or

10 (iii) *The person causes property damage or physical*  
11 *injury to a person.*

12 (B) However, the court may order public service in lieu of  
13 jail, and in that instance, the court shall include the reasons for the order  
14 of public service in lieu of jail in the court's written order or judgment.

15 (b) ~~Any~~ A person who pleads guilty or nolo contendere to or is found  
16 guilty of violating § 5-65-103 or any other equivalent penal law of another  
17 state or foreign jurisdiction shall be imprisoned or shall be ordered to  
18 perform public service in lieu of jail as follows:

19 (1)(A) For no ~~fewer~~ less than seven (7) days but no more than  
20 one (1) year for the second offense occurring within five (5) years of the  
21 first offense or no ~~fewer~~ less than thirty (30) days of community service and  
22 is guilty of an unclassified misdemeanor.

23 (B)(i) However, ~~if a person under sixteen (16) years of~~  
24 ~~age was in the vehicle at the time of the offense, for~~ the penalty shall be  
25 for no ~~fewer~~ *less* than thirty (30) days but no more than one (1) year for the  
26 second offense occurring within five (5) years of the first offense or no  
27 ~~fewer~~ *less* than sixty (60) days of community service, if at the time of the  
28 offense:

29 (a) A passenger under sixteen (16) years of  
30 age was in the motor vehicle;

31 (b) The person was driving on a *suspended or*  
32 *revoked* driver's license or was driving without having a driver's license in  
33 effect; or

34 (c) *The person causes property damage or*  
35 *physical injury to a person.*

36 (ii) If the court orders community service, the

1 court shall clearly set forth in written findings the reasons for the order  
2 of community service;

3 (2)(A) For no ~~fewer~~ less than ninety (90) days but no more than  
4 one (1) year for the third offense occurring within five (5) years of the  
5 first offense or no ~~fewer~~ less than ninety (90) days of community service and  
6 is guilty of an unclassified misdemeanor.

7 (B)(i) However, ~~if a person under sixteen (16) years of~~  
8 ~~age was in the vehicle at the time of the offense,~~ for the penalty shall be  
9 for no fewer less than one hundred twenty days (120) days but no more than  
10 one (1) year for the third offense occurring within five (5) years of the  
11 first offense or no fewer less than one hundred twenty (120) days of  
12 community service, and is guilty of an unclassified misdemeanor if at the  
13 time of the offense:

14 (a) A passenger under sixteen (16) years of  
15 age was in the motor vehicle;

16 (b) The person was driving on a suspended or  
17 revoked driver's license or was driving without having a driver's license in  
18 effect; or

19 (c) The person causes property damage or  
20 physical injury to a person.

21 (ii) If the court orders community service, the  
22 court shall clearly set forth in written findings the reasons for the order  
23 of community service;

24 (3)(A) For at least one (1) year but no more than six (6) years  
25 for the fourth offense occurring within five (5) years of the first offense  
26 or not less than one (1) year of community service and is guilty of a an  
27 unclassified felony.

28 (B)(i) However, ~~if a person under sixteen (16) years of age was~~  
29 ~~in the vehicle at the time of the offense,~~ the penalty is an unclassified  
30 felony and shall be for at least two (2) years but no more than six (6) years  
31 for the fourth offense occurring within five (5) years of the first offense  
32 or not less than two (2) years of community service ~~and is guilty of a~~  
33 ~~felony,~~ if at the time of the offense:

34 (a) A passenger under sixteen (16) years of  
35 age was in the motor vehicle;

36 (b) The person was driving on a suspended or

1 revoked driver's license or was driving without having a driver's license in  
2 effect; or

3 (c) The person causes property damage or  
4 physical injury to a person.

5 (ii) If the court orders community service, the  
6 court shall clearly set forth in written findings the reasons for the order  
7 of community service; and

8 (4)(A)(i) Except as provided in § 5-65-122, for at least two (2)  
9 years but no more than ten (10) years for the fifth or subsequent offense  
10 occurring within five (5) years of the first offense or not less than two (2)  
11 years of community service and is guilty of an unclassified felony.

12 (ii) If the court orders community service, the  
13 court shall clearly set forth in written findings the reasons for the order  
14 of community service.

15 (B)(i) However, ~~if a person under sixteen (16) years of~~  
16 ~~age was in the vehicle at the time of the offense, the penalty is an~~  
17 unclassified felony and shall be for at least three (3) years but no more  
18 than ten (10) years for the fifth offense occurring within five (5) years of  
19 the first offense or not less than three (3) years of community service ~~and~~  
20 ~~is guilty of a felony. if at the time of the offense:~~

21 (a) A passenger under sixteen (16) years of  
22 age was in the motor vehicle;

23 (b) The person was driving on a suspended or  
24 revoked driver's license or was driving without having a driver's license in  
25 effect; or

26 (c) The person causes property damage or  
27 physical injury to a person.

28 (ii) If the court orders community service, the  
29 court shall clearly set forth in written findings the reasons for the order  
30 of community service.

31 ~~(c) For any arrest or offense occurring before July 30, 1999, but that~~  
32 ~~has not reached a final disposition as to judgment in court, the offense~~  
33 ~~shall be decided under the law in effect at the time the offense occurred,~~  
34 ~~and any defendant is subject to the penalty provisions in effect at that time~~  
35 ~~and not under the provisions of this section.~~

36 ~~(d)(c)~~ It is an affirmative defense to prosecution under ~~subdivisions~~

1 subdivision (a)(2), subdivision (b)(1)(B), subdivision (b)(2)(B), subdivision  
2 (b)(3)(B), and subdivision (b)(4)(B) of this section that the person  
3 operating or in actual physical control of the motor vehicle was not more  
4 than two (2) years older than the passenger.

5 ~~(e)~~(d) A prior conviction for § 5-10-105(a)(1)(A) or ~~(B)~~(a)(1)(B) is  
6 considered a previous offense for purposes of subsection (b) of this section.

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*/s/J. Woods*

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